(25)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.857 of 2001

APPELLANT (Accused in Jail custody)	Amrit Sahu, aged about 38 years, S/o Bhakalu, resident of village Murta, P.S. Nawagarh, District Durg (CG).
	-Versus-
RESPONDENT/ PROSECUTOR	State of Chhattisgarh, through the District Magistrate, Durg, District Durg (CG).

JUDGMENT FOR CONSIDERATION

Sd/-
DHIRENDRA MISHRA
Judge

HON'BLE MR. JUSTICE DHIRENDRA MISHRA

Sd/-
L.C.BHADOO
Judge

POST FOR PRONOUNCEMENT OF JUDGMENT ON 03rd JULY, 2007

Sd/-
JL
-7-2007

(26)

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DIVISION BENCH

HON'BLE SHRI L.C. BHADOO AND

HON'BLE SHRI DHIRENDRA MISHRA, JJ.

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(Appeal under Section 374 (2) of the Cr.P.C.)

APPEARANCE:

Miss Meenu Benarjee, counsel for the appellant.

Shri D.K. Gwalre, Additional Public Prosecutor for the State/respondent.

JUDGMENT

(Delivered on 3rd July, 2007)

The following judgment of the Court was delivered by ***L.C. Bhadoo, J.***:-

The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 16-7-2001 passed by the Additional Sessions Judge, Bemetara, District Durg, in Sessions Trial No.162/2000 whereby and whereunder; learned Additional Sessions Judge has convicted the accused/appellant under Sections 302 of the Indian Penal Code for committing murders of Mani Ram, Gauri Bai & Ku. Mongra and 307 of the Indian Penal Code for attempting to commit murder of Hulas Ram and sentenced him to undergo imprisonment for life & to pay a fine of Rs.30,000/-, in default of payment of fine to further undergo R.I. for two years under Section 302 of the IPC; and to undergo R.I. for seven years & to pay a fine of Rs.10,000/-, in default of payment of fine to further undergo R.I. for one year under Section 307 of the IPC. It was further directed that both the sentences shall run concurrently.

2). This is a case of triple murder of Mani Ram, his wife-Gauri Bai & his daughter-Ku. Mongra, aged about 2 years and attempted to commit the murder of Hulas Ram, aged about 6 years by none else than the brother of Mani Ram and

uncle of Ku. Mogra & Hulas Ram, in connection with a quarrel on the ground of use of common threshing field.

3) The case of the prosecution, in brief, is that in the intervening night of 5th & 6th December, 1999 Mani Ram along with his wife Gouri Bai, daughter Ku. Mongra, aged about 2 years & son Hulas Ram, aged about 6 years, was sleeping in the threshing field. There was dispute regarding partition of property between Mani Ram and accused Amrit Sahu, who is the real brother of Mani Ram, and their uncle Babu Ram. Even the place of occurrence i.e. threshing field where the crime was committed that was also not partitioned between the two brother and their uncle, therefore, all the three persons were joint title holder and possession holder of the said threshing field, they were using that threshing filed for threshing their crops turn by turn. Before the date of incident i.e. 6-12-1999 some dispute arose between the parties namely; Mani Ram & Amrit Sahu, on the ground that who will use the threshing field first for threshing his crop. In that connection Mani Ram & Gauri Bai gave beating to the accused Amrit Sahu. All the four members of the family were sleeping in the threshing field in the fateful night in order to watch the paddy lying in the threshing field. At about 2.00 a.m. to 3.00 a.m. in the wee hours of 6-12-1999 when all four persons were sleeping in the threshing field accused came with an iron sharp edged weapon fixed on the one side of the club (*Kalari*). He attacked all those four persons with the *Kalari* and pressed the neck of Mani Ram & Gauri Bai, as a result of which Mani Ram succumbed to the injuries on the spot, whereas his wife Gauri Bai & his daughter Ku. Mongra succumbed to the injuries in the hospital. Even though Hulas Ram sustained fatal injuries, but he could survive. Hearing the cries of the child, Chandrasekhar (PW-3) whose house was at a distance of 10-15 meters from the threshing field and other witnesses namely; Tilak Ram (PW-4) & Thakel (PW-5) went near the threshing field. Chandrasekhar was carrying torch and in the light of the torch, they saw that accused Amrit was attacking Hulas Ram, a child, who was crying aloud. Thereafter seeing these persons Amrit left the place of occurrence. The matter was reported by Khorbahra (PW-2) in the Police Station Nawagarh on 6-12-1999 at about 5.05 a.m. Merg intimation is Ex.P/2. Based on that, First Information Report (Ex.P/3) was registered for commission of offence under Sections 302 & 307 of the Indian Penal Code. The Investigating Officer left for the scene of occurrence. After giving notice (Ex.P/4) to the Panchas, prepared inquest (Ex.P/5) on the body of Mani Ram & inquest (Ex.P/7) on the body of Gauri Bai. Inquest (Ex.P/18) on the body of Ku. Mongra was prepared on 8-12-1999. Hulas Ram was sent for examination of injuries to the Government Hospital, Nawagarh under Ex.P/20, where Dr. S.K. Sharma examined his injuries and prepared the report

Ex.P/31. From Government Hospital, Nawagarh, Hulas Ram was referred to District Hospital, Durg, for further management. Ku. Mongra Bai's injuries were examined by Dr. S.K. Sharma and he prepared the injury report under Ex.P/32. Gauri Bai was also examined by Dr. S.K. Sharma and he prepared injury report under Ex.P/33. The body of Gauri Bai was sent for postmortem examination to the Government Hospital, Nawagarh vide Ex.P/25 where Dr. S.K. Sharma conducted postmortem on 6-12-1999 at 2.00 p.m. and prepared report (Ex.P/36). Doctor opined that the cause of death was asphyxia due to strangulation with multiple homicidal injuries. The body of Mani Ram was also sent for postmortem examination to the Government Hospital, Nawagarh vide Ex.P/26 where Dr. S.K. Sharma conducted postmortem on 6-12-1999 at 5.00 p.m. and prepared report (Ex.P/35). Doctor opined that probable cause of death was asphyxia along with multiple homicidal injuries. The mode of death was homicidal in nature. The body of Ku. Mongra was sent for postmortem examination to the Government Hospital, Durg where Dr. R.N. Pandey conducted postmortem on 8-12-1999 at about 12.30 p.m. and prepared report (Ex.P/38). Doctor opined that cause of death was shock and hemorrhage as a result of ante mortem head injury. During investigation accused Amrit Sahu gave memorandum (Ex.P/8) regarding the place where *Kalari* was kept and in pursuance of that *Kalari* was seized under Ex.P/9. One sweater of the accused was seized under Ex.P/10. The discharge ticket of Hulas Ram was seized under Ex.P/11. Site plan (Ex.P/14) was prepared by the Patwari. Site plan was also prepared by the Station House Officer J.K. Vani (PW-15). Recovered articles were sent to Forensic Science Laboratory, Raipur, from where report (Ex.P/28) was received.

4) After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Bemetara, for the commission of offence under Sections 302 & 307 of the Indian Penal Code, who in turn committed the case to the Court of Sessions Judge, Durg, from where learned Additional Sessions Judge, Bemetara, received the same on transfer for trial.

5) In order to establish the charge against the accused/appellant, the prosecution examined 21 witnesses. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he stated that he was in Delhi on the fateful day and he does not know how the material appearing against him has come in the prosecution evidence. Thus, in reply to the most of the questions he pleaded ignorance.

6) Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned.

7) We have heard learned counsel for both the parties.

8) Miss Banerjee, learned counsel for the accused/appellant, has not disputed the homicidal death of Mani Ram, his wife Gauri Bai & his daughter Ku. Mongra and even the injuries sustained by Hulas Ram. Moreover, in view of the ocular evidence of Chandrasekhar (PW-3), Tilak Ram (PW-4) & Tukel (PW-5), who reached the spot when the crime in question was being committed have stated that they saw the accused attacking Hulas Ram and other bodies lying drenched with blood. Dr. S.K. Sharma (PW-17), who conducted the postmortem on the bodies of Mani Ram & his wife Gauri Bai, has stated that the death of Mani Ram & Gauri Bai was homicidal in nature and the injuries sustained by Mani Ram & Gauri Bai were sufficient in the ordinary course of nature to cause death. Dr. Sharma has also stated that cause of death was asphyxia and on account of injuries sustained by them, which were sufficient in the ordinary course of nature to cause death. When Gauri Bai was taken to hospital, she was alive; her dying declaration could not be recorded because she was not conscious. Dr. R.N. Pandey (PW-20) has stated that he conducted the postmortem on the body of Ku. Mongra. There was a diffused swelling in the occipital area, there was fracture in the right parietal bone & left parietal bone, there were number of fractures in the right parietal bone, there was clotted blood in the occipital temporal parietal area and the right side & left side brain tissue was ruptured. The cause of death of Ku. Mongra was shock and hemorrhage as a result of head injury. The injuries are ante mortem in nature. Therefore, in view of the above ocular and medical evidence, it is established that death of above three persons was homicidal in nature.

9) As far as involvement of the accused/appellant in commission of crime is concerned, PW-3 Chandrashekhar whose house is existing at a distance of 10-15 meter from the place of occurrence has stated that on the fateful day Maniram was threshing his paddy crop in the threshing field. At about 2.45 a.m. in the wee hours of 6-12-99 he woke up in order to attend the call of nature, he heard screams from the side of threshing field of Maniram, therefore, he came out of the house. He heard sound of beating and weeping of a child, therefore, he went to the house of his neighbour Tilakram. On his calling, Tilakram and his son Khilawan came. Thereafter, they went towards threshing field of Maniram, in the light of torch they saw that in the threshing field accused Amrit was assaulting Hulas, son of Maniram with a club like weapon near the body of Maniram.

Maniram's body was lying there drenched with blood. They saw whole scene from the distance of about 7-8 meter. Wife of Maniram was also lying. Her body was drenched with blood. At some distance, Mongra Bai was also lying there. Tilak asked Amrit (accused) as to why he is attacking, Amrit replied that yes, he is attacking, he will go to the jail, come, who comes near him. When he started coming towards their side, he, Tilak and Khilawan went back to their house. They after taking club from their house again went towards threshing field, at that time, Amrit was not there. This evidence of Chandrashekhar is corroborated by the evidence of PW-4 Tilakram. He has stated that about 2-3 a.m. Chandrashekhar and Thakel came to his house, asked him to wake up and said that sound of "*Bad Bad*" is coming from the side of threshing field of Maniram, as also child is weeping. On hearing this, he along with son Khilawan, Chandrashekhar and Thakel went towards threshing field of Maniram. Chandrashekhar was carrying torch. In the light of torch, they saw that Amrit was assaulting Hulas with a club. Bodies of Maniram, Gauri Bai and Mongra Bai were lying there drenched with blood. The body of Hulas was also drenched with blood. When he asked Amrit as to why he is attacking, he replied that yes, he is attacking, he will go to the police station and started coming towards them. Therefore, they went to their house and after taking club, they again came towards threshing field, by that time, Amrit ran away. They went inside threshing field and saw that there were injuries on the head of Maniram, Gauri Bai and Mongra Bai, on the ear and jaw of Hulas. Blood was oozing. His tooth was broken, thereafter they went to the police station Khorbahra to lodge the report. Similar is the evidence of PW-5 Thakel.

10) Learned counsel for the accused/appellant argued that evidence of these 3 witnesses who have claimed that they saw the accused attacking the deceased persons does not inspire confidence for the reason that accused Amrit was all alone whereas, they were 4 in number, therefore, it does not sound to the reason as to why they had not gone near the place of incident and intervened in the matter. She also argued that the incident had happened in the threshing field and there was a wall surrounding the field, therefore, it was not possible for these persons to see the incident in the wee hours. While inviting attention of the Court towards para-6 of cross-examination of Chandrashekhar (PW-3), she argued that there is lot of improvement in the evidence. Chandrashekhar has not mentioned all these things in the police case diary statement EX.-D/1 that he was carrying torch, he woke up in order to attend the call of nature and heard the sound of "*Bad Bad*". He has stated that he disclosed to the police, why this fact is not mentioned in the police case diary statement, he cannot assign any reason. She also argued that it is not written in the police case diary statement that the accused was

attacking Hulas, his body was lying near the body of Maniram and they returned back after carrying club. Therefore, on account of this improvement in evidence, evidence of these witnesses cannot be believed. She also argued that injuries which were found on the body of deceased persons could not be caused by Kalari, weapon of offence; because postmortem reports of Gauri Bai and Maniram show that there was punctured wound on their bodies, which could not be caused by Kalari. She also argued that no blood was found on Kalari.

11) On the other hand, Shri D.K. Gwalre, Additional Public Prosecutor for the State supported judgment of the trial Court.

12) Having heard learned counsel for the parties, we have perused evidence. As far as question that why these witnesses had not intervened in the incident when the accused was attacking Hulas is concerned, if we peruse evidence of Chandrashekhar (PW-3) and Tilakram (PW-4), they have categorically stated that they were watching the incident from the distance of 7-8 meter. The accused was attacking Hulas with a club like weapon. When Tilakram asked the accused as to why he is attacking, on which he said that he will attack, he will go to the jail, who will intervene. Thereafter, when he started proceeding towards them, they went to their house, after collecting club from their house, they returned back, by that time the accused had already left the place. These persons were armless. In their cross-examination, it has not come that they were having some weapon with them when the accused was assaulting with Kalari. When he started proceeding towards them after giving challenge, it was but natural for them being armless they were not in a position to face the accused, therefore, they had to go back to their house. They have stated that after collecting club, they returned back, by that time, the accused already left the place. Therefore, reason given by these witnesses is plausible. By the time they came armed with club, the accused already left, therefore, it cannot be said that the conduct of these witnesses was unnatural.

13) As far as arguments advanced by learned counsel for the appellant that since threshing field was covered by a wall, therefore, it was not possible for these persons to see incident is concerned, in cross-examination of these witnesses, nothing has been brought on record to show that threshing field was covered by a wall. Normally, in the village side, threshing fields are demarcated by fencing of wire or branches of bushes or trees. If we look into the site plan of the place of occurrence prepared by the Investigating Officer, in the site plan it has been shown that at place 'A' Maniram was sleeping along with his family, at place 'B'

body was lying, at place 'C' accused Amrit kept brass tumbler, at place 'E' the accused kept his Chadder, at place 'F' house of Thakel and Chandrashekhar is there, from the place 'G' i.e. in front of the gate of threshing field, these witnesses saw the accused in the light of torch while attacking. Hence, from the gate of threshing field, all these witnesses were watching the assault being made by the accused, therefore, it cannot be said that it was not possible for them to see the incident. In cross-examination of these witnesses, defence has not been able to bring anything on record to establish that demarcation of threshing field was by any wall and there was no gate at place 'G', therefore, there is no substance in the argument of learned counsel for the appellant.

14) As far as presence of these persons in the wee hours at the place of occurrence is concerned, PW-3 Chandrashekhar has categorically stated that his house is about 10-15 meter from the place of occurrence. The house of Tilak is also in his neighbourhood, that has been shown in the site plan also. Chandrashekhar has categorically stated that he woke up to attend the call of nature. He heard cries of child, thereafter he went to the house of Tilak. He along with Tilak and son of Tilak, Khilawan went towards the place of occurrence. They saw the incident. Their evidence is natural. Looking to the situation of their house which was existing near the place of occurrence and the manner in which the accused attacked child and other persons, it cannot be said that these witnesses are not natural witnesses. Moreover, all these witnesses are independent witnesses. They have no grudge against the accused. Even PW-3 Chandrashekhar in para-8 of his evidence has categorically stated that accused Amrit is his elder uncle in his relation and Maniram is younger uncle, therefore, this witness is related with both the accused and the deceased. Therefore, there was no reason before this witness to implicate Amrit, who is close relative of this witness, in a false case that too in such heinous case in which 3 persons were murdered and an attempt to commit murder of Hulas was made.

15) As far as omission in the police case dairy statement of witness Chandrashekhar about some part of evidence of this witness made before the Court is concerned, it is not necessary that each and every minute detail is required to be given in the police case dairy statement. Police case diary statement is to be seen with an angle to ensure that witness is not totally liar. Perusal of police case diary statement Ex.-D/1 shows that Chandrashekhar had made police case diary statement in which he has categorically stated that he saw the incident in the light of torch. He has also stated that after hearing cries of child, Tilakram, Khilawan and Thakel were present there. When the accused was

attacking, he was saying that he will kill them, therefore, substance of what these witnesses have said in the Court evidence is already there in the police case diary statement. Minor omission and contradiction always occur between police case dairy statement and evidence before the Court. Moreover, perusal of first information report Ex.-P/3 lodged by Khorbahra Ram Sahu shows that Maniram and his family were sleeping in the threshing field. Hearing cries, Chandrashekhar, Tilakram, Khilawan and Thakel went to the place. They saw the accused attacking those persons. Therefore, first information report which was lodged prior to the statements of these witnesses also confirms the evidence given by these witnesses before the Court. From the first information report and evidence of the witnesses, it has come on record that threshing field in question was in the joint ownership of deceased Maniram, accused and their uncle Baburam and they were using threshing field turn by turn. The accused had gone to Delhi to earn livelihood, from there he returned a week's back, previous day there was some quarrel between Maniram and the accused regarding turn for using threshing field for threshing their paddy crop, thereafter threshing field was got ready by Maniram and he put his paddy brought for threshing, therefore, the accused was unhappy and hence, he had a motive to attack the deceased persons. Therefore, we do not find any material omission or contradiction in police case diary statement and court evidence of witness in order to discard or disbelieve evidence of these witnesses.

16) Learned counsel for the accused/appellant also argued that Maniram, his wife and children were sleeping, when the first attack was made by Amrit, then it was but natural that persons sleeping by side could have woken up and raised alarm because the accused was all alone, it was not possible for him to attack all the deceased persons at a time. The manner in which the incident took place, it was not possible for a single person to attack all these persons simultaneously, therefore, case against the accused is doubtful.

17) On careful scrutiny of the record, postmortem reports and evidence of these witnesses, we are of the considered opinion that arguments advanced by learned counsel for the appellant does not carry much weight for the reason that doctor has categorically stated that there were marks of strangulation on the necks of Maniram and Gauribai, cause of death was asphyxia due to strangulation and multiple homicidal injuries. It is admitted position that the incident took place in the wee hours of 6-12-99, therefore, at that time, it was but natural that all the 4 persons were in sound sleep. In fact, in the first instance, the accused throttled both elder members i.e. Maniram and Gauribai, simultaneously, he attacked them

with Kalari, sharp edged iron weapon, which was fitted on the corner of the wood, on their head therefore, there was no occasion for those persons to wake up. If one assault with force is made on the head, simultaneously neck is pressed, it is not possible for other persons to know about the assault made by accused. There was lacerated and punctured wound, there was boney fracture on the heads of Maniram and Gauribai, therefore, it was not possible for the deceased persons to raise cries. Other two children namely, Mongra was aged about 2 years and Hulas was aged about 6 years, therefore, there was no question of any objection by these two minor children. Therefore, in the circumstances, it was possible for a single person to attack all the 4 persons without much resistance by the deceased persons as they were sleeping.

18) As far as injuries sustained by the deceased persons and nature of weapon is concerned, club with which Kalari was fitted was broken when the accused attacked with that. Kalari and other articles were sent to the doctor for examination. After examining these articles, doctor gave his report Ex.-P/34 in which it has been mentioned that Kalari was made of iron having a sickle shaped rounded rod like portion with tapering tip and pipe like iron handle. Inside handle, broken piece of bamboo stick was present. Rounded rod like portion 18 cm in the length and 4 cm dia. Looking to the shape of Kalari, it was possible to cause punctured wound. Moreover, as per the doctor's report, there was blood on the club. FSL report Ex.-P/28 shows that there was blood on the club. As per the serologist's report Ex.-P/39, human blood was present on the club. Therefore, it cannot be said that injuries found on the bodies of Gauribai, Maniram, Mongra and Hulas could not be caused by Kalari and club in question.

19) For the foregoing reasons, the prosecution has been able to establish involvement of the accused/appellant with cogent, clear and legal evidence in committing murders of Maniram, Gauribai, Mongra and attempting to commit murder of Hulas. Therefore, we do not find any illegality or infirmity in the judgment of the trial Court, same is based on sound reasoning and also based on legal and clinching evidence regarding involvement of the accused/appellant in the crime in question.

20) In the result, the appeal fails, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Gowri/Barve